Supreme Court, U. S.
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MIOHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. 77-48

JOSEPH B. WALLES,
Petitioner,

vs.

BECHTEL CORP., et al.,
Respondents.

RESPONDENT BECHTEL CORP.'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

TO THE SUPREME COURT OF IOWA

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ARGUMENT

I. THE IOWA SUPREME COURT CORRECTLY DECIDED THAT THE COURTS OF THAT STATE LACK JURISDICTION TO DECIDE THIS CASE DUE TO FEDERAL PREEMPTION.

The sole issue presented to this Court is whether the Iowa Supreme Court was correct in deciding that the State Courts lack jurisdiction in this case absent a negotiated and executed agreement between Bechtel Corp. (hereinafter "Bechtel") and Local 405 which contained a closed shop provision.

In San Diego Building Trades Council v. Garmon, 359 U.S. 236 (1959), the Court established the test for the application of the doctrine of federal preemption:

> "When an action is arguably subject to Sec. 7 or Sec. 8 of the Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board." 359 U.S. at 245

Walles, in his Petition filed in State District Court, alleged that Bechtel discharged him pursuant to some sort of a closed shop "agreement". Such an action, is proved, would be more than arguably an unfair labor practice, it would clearly violate Sections 8(a) (1) and (3) of the National Labor Relations Act, 29 U.S. C. Sections 158(a) (1) and (3) of the National Labor Relations Act, 29 U.S. C. Sections 158(a) (1) and (3). Garmon therefore mandates that the National Labor Relations Board determine if an unfair labor practice has been committed before any court has jurisdiction.

Congress did not intend to totally preempt state regulation in this area, however. The states are free to legislatively establish prohibitions against closed shop agreements, under Section 14(b) of the Act, 29 U.S.C. 164(b), which provides:

> "Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization

> as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law." (emphasis added)

In Retail Clerks International Association Local 1625 v. Schermerhorn, 375 U.S. 96 (1963) (Schermerhorn II), this Court delineated the scope of state regulation under 14(b) when it expressly held:

> "/S/tate power, recognized by §14(b) begins only with actual negotiation and execution of the type of agreement described by 14(b). Absent such an agreement conduct arguably an unfair labor practice would be a matter for the National Labor Relations Board under Garmon."

While Section 14(b) establishes the rights of the states to prohibit the execution or application of closed shop agreements, Schermerhorn II limits the permissible scope of state regulation to negotiated and executed agreements.

Walles has not alleged that the specific type of agreement required by Schermerhorn II existed. To the contrary, he alleges only some kind of undefined "agreement or understanding". Under Schermerhorn II, this form of allegation is not sufficient to vest the state courts with jurisdiction. Indeed, the instant case is exactly what Schermerhorn referred to when it restricted state court jurisdiction to negotiated and executed agreements. Therefore, Schermerhorn II, together with the principles set forth by this Court in Garmon, clearly establish that unless and until the National Labor Relations Board determines that an unfair labor practice has been committed, or declines to do so, the Iowa State Courts are without jurisdiction to decide this case.

II. PETITION HAS FAILED TO DEMONSTRATE SUFFICIENT REASON FOR THE GRANTING OF A WRIT OF CERTIORARI.

A writ of certiorari to this Court is not obtainable as a matter of right but will be "granted only where there are special and important reasons therefor." Rule 19(1); Rules of the Supreme

Court of the United States. The Petitioner has failed to demonstrate any such reasons.

The decision of the Iowa Supreme Court does not in any way frustrate national labor policy as the Petitioner asserts. Rather it is in accord with the centralized administrative scheme established by Congress to deal with labor matters; Garner v. Teamsters Local 776, 346 U.S. 485 (1953); a scheme which has the expertise of the National Labor Relations Board at its core. Therefore, it was for the Board to decide, in the first instance, whether a closed shop agreement of the type alleged by Walles existed.

This case and the subsequent appeals have arisen solely because the Petitioner refused to follow the procedures established by Congress for dealing with unfair labor practices. Had Walles first gone to the Board, as he should have, this costly litigation could have been avoided. Indeed, Petitioner admits that he did not file a charge with the Board because it would have been "untimely". Bechtel is aware of no authority which excuses failure to follow the established procedures for such a reason.

CONCLUSION

The cases of San Diego Trades Council v. Garmon, 359 U.S. 236 (1959) and Retail Clerks International Association v. Schermerhorn, 375 U.S. 96 (1963), when taken together, conclusively establish that the National Labor Relations Board, and it alone, had original jurisdiction to decide the question raised by Walles in the Iowa State Court. Petitioner, in argument, asserts that if the decision of the Supreme Court of Iowa is permitted to stand it will encourage "lawlessness". On the contrary, by denying a writ of certiorari, this Court will encourage potential complaintants to follow the clearly prescribed policies, procedures and rules which have been established by Congress to deal with labor difficulties, and which have been further delineated and approved by this Court. Petitioner points to no issue of overriding national or constitutional significance which would require the attention of this Court and there is an absence of conflicting authority on the issue presented. The Petition for Certiorari should be denied.